



## City of Wheatland

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### CITY COUNCIL MEETING

Date: September 8, 2009

### STAFF REPORT

Agenda Item: 4.1

**Subject:** Second Reading of Nuisance Abatement Ordinance

**Prepared by:** Tim Raney, Community Development Director

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#### Recommendation:

Staff recommends the City Council conduct a Second Reading of the Nuisance Abatement Ordinance.

#### Discussion:

In 2008, Quality Code Publishing (QCP) began the process of updating the Wheatland Municipal Code. In addition to the need for numerous clarifications and organizing code amendments, the City undertook major revisions to the Nuisance Abatement Ordinance.

The process to revise the Nuisance Abatement Ordinance included conducting participatory Nuisance Abatement Subcommittee meetings under the auspices of the Planning Commission. The subcommittee conducted five (5) public workshops on the following dates:

March 3, 2009  
March 17, 2009  
March 31, 2009

April 17, 2009  
April 21, 2009  
May 5, 2009

The Wheatland City Council conducted and waived the first reading of the proposed Nuisance Abatement Ordinance and accompanying Resolution on August 11, 2009.

**Exhibits:**

**A. Ordinance Amending Nuisance Abatement Standards and Proceedings**

## **ORDINANCE NO. 414**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHEATLAND AMENDING NUISANCE ABATEMENT STANDARDS AND PROCEEDINGS**

The City Council of the City of Wheatland does ordain as follows:

**SECTION 1. Purpose and Authority.** The City desires to revise and update its Municipal Code provisions concerning nuisance abatement standards and proceedings. In 2008, as part of the City analysis, update and codification of the Wheatland Municipal Code, the City Council established a Nuisance Abatement Subcommittee to review and recommend changes to the City nuisance abatement ordinance. The Subcommittee met several times and thoroughly evaluated the nuisance abatement provisions. This ordinance reflects the Subcommittee's recommendation to the City Council. This ordinance is adopted pursuant to California Constitution, article 11, section 7, Government Code sections 38771 to 38775, and other applicable authority.

**SECTION 2.** Wheatland Municipal Code chapters 8.08 and 8.36 are hereby repealed.

**SECTION 3.** Chapter 8.08 is hereby added to the Wheatland Municipal Code to read as follows:

#### **Chapter 8.08 NUISANCE ABATEMENT**

**Sections:**

- 8.08.010 Title.
- 8.08.020 Purpose.
- 8.08.030 Definitions.
- 8.08.040 Declaration of Nuisances.
- 8.08.050 Authority to Inspect.
- 8.08.060 Notification of and Request to Abate Nuisance.
- 8.08.070 Hearing to abate Nuisance.
- 8.08.080 Notice of Hearing.
- 8.08.090 Hearing Procedure.
- 8.08.100 Appeal Procedures.
- 8.08.110 Appeal Decision.
- 8.08.120 Service of Order to Abate.
- 8.08.130 City Abatement.
- 8.08.140 Summary Abatement of Nuisance that Poses an Immediate Threat to Public Health or Safety.
- 8.08.150 Abatement Costs – Report of Costs, Including Attorney's Fees.
- 8.08.160 Abatement Costs – Hearing, Notification and Collection.

- 8.08.170 Nuisance Abatement Lien – Recordation and Collection.
- 8.08.180 Special Assessment Against Parcel.
- 8.08.190 Civil, Criminal or Other Action to Abate Nuisance.
- 8.08.200 Alternate Procedure for Weed Abatement.

8.08.010 Title. This chapter shall be known as the “Wheatland Nuisance Abatement Ordinance.”

8.08.020 Purpose. This chapter is adopted to declare what constitutes a nuisance and to establish procedures to abate a nuisance and to recover the cost of doing so from those responsible for the nuisance. The city council declares that adoption of this chapter is in the public interest and promotes the peace, health, safety and welfare of residents of the City of Wheatland.

8.08.030 Definitions. Unless specifically defined in this section, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage and to give this chapter its most reasonable application.

A. “Enforcement officer” means an individual, office or position designated by the city manager to act under this chapter or who otherwise has authority to issue notices of violation of this code.

B. “Nuisance” means a nuisance as defined in this chapter, elsewhere in this code, by another ordinance of the city, or by other law.

C. “Hearing Officer” means the appointed hearing officer. The Mayor shall appoint one or more persons to serve as City nuisance abatement hearing officer. Such officer or officers shall serve at the pleasure of the Mayor. The City Council by resolution may provide for compensation for such officers; provided, however, that the compensation shall not be linked directly or indirectly to abatement related costs or penalties received by the City.

D. “Responsible person” means and includes each or any of the following:

1. A person that, by action or inaction, causes, maintains, permits or allows a nuisance;

2. A person whose agent, employee, or independent contractor, by action or inaction, causes, maintains, permits or allows a nuisance;

3. An owner, in whole or in part, of real property on which a nuisance occurs, exists or is maintained;

4. A lessee or sublessee with a current right of possession of real property on which a nuisance occurs, exists or is maintained;

5. A person that uses real property on which a nuisance occurs, exists or is maintained;

6. An on-site manager who regularly works on real property on which a nuisance occurs, exists or is maintained, and who is responsible for the business or other activities on that real property;

7. The owners, majority stockholders, corporate officers, trustees, general partners or any other person with the authority to act for a legal entity such as a corporation that is a responsible person under any or all of subsections 1 through 6 above;

8. If any of the above persons are minors or incompetent, the parents or guardians of such persons shall be deemed responsible persons during such minority or incompetence.

E. “Service” means, except as expressly otherwise provided by this chapter, delivery of any notice or other document (i) to a responsible person by personal delivery, or by deposit in the United States mail addressed to a responsible person at his, her or its last address known to the city, and (ii)

if the responsible person served under (i) is not the owner of the property on which a nuisance occurs, exists or is maintained, then also to the owner of the property by personal delivery or by deposit in the United States Mail addressed to the owner's address as it appears on the last equalized assessment roll of Yuba County. Service by mail of a notice or other document in the manner provided for in this section shall be effective on the date of mailing. The failure of any person to actually receive such notice shall not affect the validity of the notice or any proceeding if the requirements of this section are satisfied.

F. "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a street or highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

#### 8.08.040 Declaration of Nuisances.

A. Nuisances Visible from Off-Site. Except as expressly allowed by any other provision of law, including this code, it is unlawful for any responsible person to maintain property in the city, or to allow property in the city to be maintained, such that any of the following conditions are visible from a street, other public right-of-way, or from portions of the property held open to the general public, or, with respect to conditions adversely affecting public health or safety, from neighboring property:

1. Unlawful Outdoor Storage and Conditions.

a. An accumulation of abandoned, discarded, or dilapidated objects, including, but not limited to the following: junk; abandoned, wrecked, dismantled or inoperative vehicles; vehicle parts and equipment; machine parts; scrap material; appliances; furniture; household equipment and furnishings; shopping carts; containers; packing boxes and materials; scrap metal; lumber and wood; plant cuttings; pallets; salvage materials; and, rubbish, debris or similar matter that constitutes a threat to public health or safety or renders any premises unsightly and detrimental to the general public welfare;

b. Maintaining or failing to maintain property so as to allow conditions that are dangerous and accessible to children or other members of the public, including, but not limited to, abandoned, broken, neglected or unsupervised vehicles, machinery, equipment, lights, light fixtures, refrigerators and freezers, pools, ponds and excavations, as well as all other items and conditions identified in Penal Code section 402c;

c. Materials or other items stacked above any fence or otherwise stored or stacked on a property in a disorderly or unsightly manner or in a manner by which the materials could be discharged into a storm drain system or otherwise violate the Federal Clean Water Act or other applicable federal, state or local law. Nothing in this section shall be construed to prohibit the orderly outdoor storage of business-related materials and inventory above fence height where permitted by applicable zoning designation, rules and regulations;

d. The placement of items of business inventory, refuse containers, equipment, vehicles, or any other obstruction on a street, sidewalk or parking area developed or intended for use by the public or by invitees onto the property;

e. Boats, trailers, recreation vehicles, motor vehicles, parts thereof, or other articles of personal property that are left in a state of partial construction, dilapidation or disrepair;

f. The storage of firewood or other flammable materials other than in compliance with standards relating to the safe storage of combustible materials established in writing by the Wheatland Fire Authority or by applicable federal, state or local law;

2. Trash, Litter, Trimmings, Oil and Debris.

a. The accumulation of litter, debris, trimmings or trash on any property, including sidewalks, gutters, storm drains, driveways, walkways, alleyways, parking lots or a public right-of-way or from which a continuous, offensive odor emanates, even though not visible as set forth above;

b. Pooled oil, water, or other liquid accumulation, flowing onto the street, or into a storm drain system, or excessive accumulations of grease or oil on paved surfaces or in a storm drain system.

3. Awnings, covers, canopies, umbrellas, screens, lights, light fixtures, other window coverings or building features that are damaged, torn, severely faded, rusted, bent, unpainted or otherwise in substantial disrepair.

4. Fences and Gates. Fences or other structures on private property that are sagging, leaning, fallen, decayed, extend into a public right-of-way or are otherwise dilapidated or unsafe.

5. Graffiti. Graffiti or other words, lettering or drawings not otherwise permitted by the provisions of this code, which remain on the exterior of any building, fence or wall more than ten days after written notice to remove the same has been given by the enforcement officer.

6. Parking Limitations. Vehicles parked within any required front yard or side street yard setback or on any surface that has not been approved for parking pursuant to this code.

7. Construction equipment or machinery of any type or description parked or stored on property, except: (a) during excavation, construction or demolition operations covered by an active building permit on the subject property or an adjoining property; or (b) when such machinery is stored in compliance with the zoning and other applicable provisions of this code;

B. Additional Unlawful Nuisances. Except as may be authorized by this code, it is unlawful for any responsible person to maintain, or to allow another to maintain, property in the city so that any of the following conditions exist thereon:

1. Buildings & Structures.

a. Any building or structure on which the exterior paint or stucco has deteriorated so as to permit decay, excessive checking, cracking, peeling, chalking, dry rot, warping or termite infestation as to render the building unsightly or in a state of disrepair;

b. Any building or structure with windows containing broken glass or no glass at all, where the window is of a type that normally contains glass, which constitutes a hazard and/or invites trespassers or malicious mischief. Plywood or other material used to cover broken or missing windows, if permitted under this code, shall be painted in a color or colors compatible with the remainder of the building;

c. Any building or structure determined by the city building official to be a dangerous building or a substandard building; any building or structure that is dilapidated, abandoned, boarded up, or partially destroyed, or that has broken windows or broken windows secured with wood or other materials; any building or structure that is being demolished but where demolition has not been diligently pursued; and, any building or structure that is unpainted or where the paint on the building exterior is significantly cracking, peeling, chalking, or worn off;

d. Any abandoned or vacant building or structure that is being used or has been used by juveniles, vagrants or other persons engaged in trespass, malicious mischief, gang-related activity, alcohol or drug related activity, or other illegal activity.

2. Landscaping/Vegetation/Property Maintenance.

a. General. Maintaining or failing to maintain property as to allow overgrown vegetation, the accumulation of dirt, litter, trash, or debris, animal manure, dead organic matter, garbage, stagnant



water, combustible materials, machinery, equipment, excessive dust, or similar materials or conditions (i) that provide a likely habitat for vermin, insects or rodents of any kind, (ii) from which foul smells or odors emanate, or (iii) that constitute a fire, health or safety hazard or other danger to public health, safety or welfare;

b. Animals. Keeping or maintaining on property any live or dead animal in such a manner as to pose a threat, disturbance, danger or menace to the health or safety of the community;

c. Erosion, Subsidence or Runoff. Maintaining property, the topography or configuration of which, whether in its natural state or as a result of grading operations or other earth movement activities, causes or may cause erosion, subsidence or surface water runoff injurious to public health or safety;

3. Trash Containers.

a. Trash, garbage or refuse cans, bins, boxes, or other such containers that emanate a continuous, offensive odor;

b. Any occupied property without regular and adequate trash collection service;

c. Trash containers without secure, firmly fitting covers or evidencing an overflow of trash and/or other debris.

4. Other.

a. Any other condition or use of property that the enforcement officer reasonably determines to be a threat to the public peace, health, safety or welfare because (i) the condition or use renders the property unsafe, dangerous or hazardous, or (ii) the condition or use that is so out of harmony with the standards, conditions and uses of properties in the vicinity as to cause substantial diminution of the enjoyment, use or value of such other property, or that otherwise prevents the reasonable use of such other property.

b. Property maintained in violation of any of the construction, building and other codes adopted pursuant to Wheatland Municipal Code chapter 15.04;

c. Failure to comply with the requirements set forth in any city zoning approval or permit applicable to the premises;

d. Maintaining any building, structure or property in violation of any specific requirements or prohibition applicable to the building or structure or property contained in this code, other city ordinance federal, state or local law relating to the condition, location, maintenance or construction of buildings, structures or property.

8.08.050 Authority to Inspect. Enforcement officers are authorized to enter upon any property or premises within the city to ascertain whether a nuisance as defined in this chapter exists, and to make any inspection, examination and surveys as may be necessary or appropriate in the performance of their enforcement duties, in accordance with federal and state constitutions. These inspections may include the taking of photographs, samples, or other physical evidence. All inspection, entries, examinations and surveys shall be performed reasonably and in accordance with law. If an owner or occupant of property or his or her agent refuses to consent to entry and inspection, and if required by the federal or state constitution, an enforcement officer may seek an administrative inspection warrant pursuant to law.

8.08.060 Notification of and Request to Abate Nuisance.

- A. All property found to be maintained in any manner that is a nuisance under this chapter may be abated by rehabilitation, demolition, repair or other appropriate action pursuant to the procedures set forth in this chapter.
- B. The procedures for abatement set forth in this chapter are not exclusive and shall not in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner provided by law.
- C. When an enforcement officer determines that a nuisance exists, he or she shall serve (in accordance with section 8.08.030(E)) a written notice of such determination and a request to abate the nuisance. The request shall identify the address at which the nuisance exists; describe the nuisance to be abated; set forth a reasonable time to abate the nuisance; if necessary, request particular corrective actions to accomplish the abatement; warn about the consequences of failing to complete abatement within the prescribed time limit; and reference this chapter. Unless an immediate threat to the health, welfare, or safety of the public exists, the time limit for abatement shall be at least ten days.
- D. If a responsible person timely complies with the notice to correct a nuisance, then the enforcement officer will so notify the responsible person in writing and the notice to correct shall be deemed resolved.

8.08.070 Hearing to abate Nuisance. In the event a responsible person(s) shall fail, neglect or refuse to comply with a notice to correct a nuisance within the time set forth for abatement pursuant to section 8.08.060(C), the Hearing Officer shall conduct an administrative review hearing to ascertain whether or not the violation constitutes a nuisance as set forth in this chapter or in any other applicable law.

8.08.080 Notice of Hearing.

- A. Notice of the Hearing Officer's administrative review hearing shall be served upon the responsible person(s) not less than 14 days before the time set for the hearing.
- B. Notice of the hearing shall include the time, date and location of the hearing, a list of the nuisance violation(s) on the property, and a statement requesting the responsible person(s)' attendance at the hearing.
- C. The notice shall be served as provided in section 8.08.030(E).
- D. Continuance of the hearing may be granted by the Hearing Officer on request of the responsible person(s) for good cause shown, or on the Hearing Officer's own motion. The responsible person(s) shall be notified of any continuance in accordance with section 8.08.030(E). A responsible person's failure to attend or to be represented at a hearing shall constitute an abandonment of the hearing and a failure to exhaust administrative remedies.
- E. Each and every responsible person given notice of a nuisance as required by this chapter is jointly and severally liable for the abatement of any nuisance, the costs of abatement, and any related fines, penalties, and interest imposed.
- F. At the time of serving the notice of hearing, a notice of pending nuisance abatement action describing the property, property owner, and the nature of the action may be recorded by the city with the Yuba County Recorder's Office. When the abatement action has been fully resolved and all costs associated therewith finally settled, a certificate of compliance describing the property and property owner and referencing the recorded notice of pending nuisance abatement action shall be recorded.



#### 8.08.090 Hearing Procedure.

- A. At the time, date and location stated in the hearing or continuance notice served upon the responsible person(s), the Hearing Officer shall hear and consider all relevant evidence, objections or protests and shall receive testimony from responsible person(s), witnesses, city personnel and other interested persons relative to the alleged nuisance and to the proposed rehabilitation, repair or demolition of the property upon which the alleged nuisance exists.
- B. The request for abatement and any supporting documents prepared by the enforcement officer shall be accepted by the Hearing Officer and shall constitute prima facie evidence of the facts stated in such documents.
- C. The Hearing Officer may continue the hearing from time to time and allow the responsible person(s) additional time to abate the nuisance. In addition, the Hearing Officer may request additional information or evidence from the responsible person(s) or from the enforcement officer. The enforcement officer and other representatives of the city may, but need not, attend the hearing.
- D. All hearings shall be recorded on a video or audio device, unless the city elects to use a court reporter. If a court reporter is not used, the city need not provide transcripts of any hearing, but, within 15 days after payment of a reasonable duplication fee, shall provide a copy of the video or audio recording to the responsible person(s) or any interested third party. If a court reporter is used, a responsible person may obtain a copy of the transcript upon payment of any fees or costs incurred by the city to provide the transcript.
- E. The hearing need not be conducted in accordance with the technical rules of evidence. Any relevant evidence may be admitted if it is of a type upon which reasonable persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make such evidence inadmissible in a civil action. The Hearing Officer may exclude irrelevant or unduly repetitious evidence.
- F. After considering all testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to affirm, modify, or dismiss the request to abate. The decision shall include the Hearing Officer's findings and give notice of the right to file an appeal with the planning commission as provided in section 8.08.100 and thereafter to seek judicial review pursuant to Code of Civil Procedure section 1094.5. If the Hearing Officer determines that a nuisance exists, he or she may declare the property to be a public nuisance and order the responsible person(s) to abate the nuisance within 20 days by having such property, building(s) or structure(s) rehabilitated, repaired or demolished or the nuisance otherwise abated. If the nuisance is declared an immediate threat to the health, welfare or safety of the public the Hearing Officer may direct the responsible person(s) to abate the nuisance within a 10-day, or shorter, period of time after service of the decision.
- G. A copy of the Hearing Officer's order shall be served pursuant to section 8.08.030(E) on all owners of the subject property, any other responsible person(s), and any owner of property within the vicinity of the subject property who requests such notice or who appeared at the hearing. Failure of any interested third party to receive such notice shall not impair the effectiveness of the Hearing Officer's decision.

#### 8.08.100 Appeal Procedures.

- A. Any responsible person who receives a decision under section 8.08.090 may appeal the Hearing Officer's decision for review by the planning commission by filing with the city clerk within 10 days of service of such decision, a written notice of appeal containing the following information:

1. The property that is the subject of the nuisance abatement proceeding;
  2. The names of all persons on whose behalf the appeal is filed;
  3. The interest of each appellant involved in the proceeding;
  4. The reasons for the appeal, together with any material facts supporting the contentions of the appellant(s);
  5. The signatures of all appellants, and their mailing addresses.
- B. As soon as practical after receiving the written appeal, the city clerk shall set a date for hearing of the appeal by the planning commission, which date shall not be less than seven days nor more than 35 days from the date the appeal was filed.
- C. Appellant(s) shall be responsible for paying an appeal fee prior to the date of the hearing in an amount established from time to time by resolution of the city council.
- D. The city clerk shall serve, in the manner provided in section 8.08.030(E), written notice of the time and the place of the hearing at least five days before the date of the hearing to each appellant.
- E. Continuance of the hearing may be granted by the Hearing Officer on request of the appellant(s) for good cause shown, or on the Hearing Officer's own motion. The responsible person(s) shall be notified of any continuance in accordance with section 8.08.030(E).

#### 8.08.110 Appeal Decision.

- A. Upon conclusion of a hearing on an appeal filed under section 8.08.100, the planning commission by resolution shall do one of the following:
1. Terminate the proceeding and dismiss the matter;
  2. Confirm the decision of the Hearing Officer; or
  3. Modify such decision based upon evidence presented at the appeal hearing.
- B. Unless the planning commission dismisses the matter, the planning commission shall declare such property to be a public nuisance and order the responsible person(s) to abate the nuisance within 20 days by having such property, buildings or structures rehabilitated, repaired, demolished or the nuisance otherwise abated in the manner and means specifically set forth in accordance with the planning commission's resolution and order.
- C. The decision of the planning commission shall be served as required by section 8.08.120 and shall be subject to judicial review in the manner specified in Code of Civil Procedure section 1094.5. The timely filing and diligent prosecution of a request for a hearing before the Hearing Officer and of an appeal to the planning commission are administrative remedies that must be exhausted before judicial review may be sought.

#### 8.08.120 Service of Order to Abate.

- A. The order regarding the abatement of a nuisance shall be served upon the responsible person(s) in accordance with the provisions of section 8.08.030(E), and shall describe the needed corrections or other means to abate the nuisance.
- B. A responsible person shall have the right, at his or her expense, to have any such property rehabilitated or to have such buildings or structures demolished or repaired or otherwise abated in accordance with the planning commission's order, provided the abatement is commenced prior to the expiration of the 20-day period immediately after the planning commission's order is issued and is thereafter diligently and continuously prosecuted to completion. Upon completion of such abatement by the responsible person(s) to the satisfaction of the city manager, proceedings under this chapter shall terminate.

8.08.130 City Abatement. If a nuisance is not abated as directed by the Hearing Officer by the time set forth in the Hearing Officer's order or, if there is an appeal, by the time set forth in the planning commission's order, then the city may abate the nuisance. If required by the federal or state constitution, before the city makes inspection or proceeds with abatement on private property, the city shall obtain the consent of a responsible person(s) to enter onto the private property to abate the nuisance or obtain an administrative inspection and/or abatement warrant from the court.

8.08.140 Summary Abatement of Nuisance that Poses an Immediate Threat to Public Health or Safety. The city manager may immediately abate, without observance of any notice or consent requirements set forth in this chapter, any condition or nuisance that constitutes a serious and imminent danger to the public health or safety. Whenever the city causes a summary abatement under this section, it shall provide the responsible person(s) with a post-abatement hearing to contest the validity of the summary abatement under the procedures set forth above for a hearing before as specified in sections 8.08.080 and 8.08.090, the result of which thereafter may be appealed pursuant to sections 8.08.100 to 8.08.120.

8.08.150 Abatement Costs – Report of Costs, Including Attorney's Fees.

A. If the city abates the nuisance, it may recover its abatement costs from the responsible person or persons. The city shall keep and maintain a detailed account of its abatement costs, including administrative costs such as the cost for preparing, bidding, and awarding a contract for abatement work. Upon completion of abatement by the city, the Hearing Officer shall transmit a report of abatement costs to the city clerk.

B. As authorized by Government Code section 38773.5(b), in any action, administrative proceeding, or special proceeding to abate a nuisance, the prevailing party shall be entitled to recovery of attorney's fees. The recovery of attorney's fees by a prevailing party shall be limited to those individual actions or proceedings in which the city elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the city in the action or proceeding. The city manager shall report any attorney's fees incurred by the city in a proceeding under this section to the city clerk. Such attorney's fees shall be recoverable as costs of abatement. The report of attorney's fees shall be made part of any related report of abatement costs.

8.08.160 Abatement Costs – Hearing, Notification and Collection.

A. Upon receipt of a report of abatement costs, the city clerk shall schedule a hearing before the Hearing Officer to consider that report.

B. The city shall give the responsible person(s) at least five days' notice of the hearing. Notice shall be served as provided in section 8.08.030(E). The notice shall include a copy of the report of abatement costs, provide notice of the time and place of the hearing, state that the responsible person(s) may object to the abatement costs at the hearing, and state that the abatement costs may be made a special assessment or a nuisance abatement lien against the parcel of property on which the abated nuisance existed or the city may enforce the duty to pay those costs in any other manner provided by law.

C. A responsible person may object to the abatement costs at the hearing. The Hearing Officer shall consider the report of abatement costs and any objections and determine whether the costs set forth in the report of abatement costs are accurate and reasonable. The Hearing Officer shall affirm, correct, or modify the report of abatement costs in light of the evidence before him or her. The decision of the Hearing Officer on the report of abatement costs shall be final as to the city, but subject to judicial review in the manner specified in Code of Civil Procedure section 1094.5.

D. Upon report of the Hearing Officer, the city council may adopt a resolution making the abatement costs a lien against the property on which the nuisance was maintained and a personal obligation of the property owner and any other responsible person(s) as set forth in section 8.08.170.

E. If abatement costs are not paid within five days after the costs become final, the city may take one or more of the following actions to collect the costs:

1. The city manager may bring an action on behalf of the city in small claims court against the responsible person(s) to collect the costs of abatement in an amount within the jurisdiction of the small claims division of the superior court.

2. The city attorney may bring an action on behalf of the city in the unlimited jurisdiction of the superior court against the responsible person(s) to collect the costs of abatement.

3. The city may cause the nuisance abatement lien to be recorded pursuant to Government Code section 38773.1 and section 8.08.170 of this chapter.

4. The city may cause the cost of abatement to be made a special assessment against the parcel on which the nuisance was abated pursuant to Government Code section 38773.5 and section 8.08.180 of this chapter.

5. The city may recover its abatement costs through any other method provided by law.

#### 8.08.170 Nuisance Abatement Lien – Recordation and Collection.

A. Pursuant to Government Code section 38773.1, prior to the recordation of the lien, notice of the lien shall be served on a responsible person(s) who is the owner of record of the parcel of the land on which the nuisance was abated, based on the last equalized assessment roll or the supplemental roll, whichever is more current.

B. The notice shall specify the amount of the lien, identify the city as the public agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel.

C. The notice must be served in the same manner as a summons in a civil action in accordance with Code of Civil Procedure part 2, title 5, chapter 4, article 3 (commencing with section 415.10). If the owner of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation pursuant to Code of Civil Procedure section 6062.

D. After service of the notice, the city shall submit the nuisance abatement lien to the county recorder for recordation. The date of recording of the lien shall have the force, effect, and priority of a judgment lien.

E. If the lien is discharged, released, or satisfied, either through payment or foreclosure, the city shall cause a notice of the discharge to be recorded.

F. The city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of any foreclosure or collection action to enforce the lien.



8.08.180 Special Assessment Against Parcel.

A. As an alternative to the procedure authorized by Government Code section 38773.1, the abatement costs may be collected as a special assessment against the real property on which the nuisance was abated pursuant to Government Code section 38773.5. The assessment shall continue until it is paid, together with interest at the legal maximum rate computed from the time the determination of the abatement cost became final.

B. At the time the special assessment is imposed, notice of the special assessment shall be served on the owner of record of the parcel of the land on which the nuisance was abated, based on the last equalized assessment roll or the supplemental roll, whichever is more current.

C. The notice shall specify the amount of the assessment, identify the city as the public agency on whose behalf the assessment is imposed, the date of the abatement order, the street address, legal description, and assessor's parcel number of the parcel on which the assessment is imposed, the name and address of the record owner of the parcel, and state that the amount of the cost of abatement is a special assessment against the real property until it is paid, with an interest rate set forth therein. The notice shall also specify that the property may be sold after three years by the county treasurer-tax collector for unpaid delinquent assessments.

D. If the property owner's identity can be determined from the records of the county assessor or county recorder, the city must serve the notice by certified mail.

E. The county treasurer-tax collector's power of sale shall not be affected by the failure of a property owner to receive notice. The assessment may be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for property taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead be transferred to the unsecured roll for collection.

F. If the city imposes a special assessment pursuant to Government Code section 38773.5, the city may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent, subject to the requirements applicable to the sale of property pursuant to Revenue and Taxation Code section 3691.

G. If the assessment levied for city abatement costs, together with any interest or penalties thereon, is paid in full after the date the assessment is added to the county tax rolls, the city shall promptly cause such assessment to be removed from the tax rolls.

8.08.190 Civil, Criminal or Other Action to Abate Nuisance. The procedures for notification and abatement of nuisances in this chapter shall be in addition to any other proceedings authorized by law. Nothing in this chapter shall be deemed to preclude the city attorney from commencing a civil or criminal action to abate a nuisance in any manner provided by law.

8.08.200 Alternate Procedure for Weed Abatement. As an alternate to the procedures outlined in this chapter, the City may abate weeds growing upon any streets, sidewalks or private property, and any refuse, rubbish or dirt upon parkways, sidewalks or private property, in accordance with the

provisions set forth in Government Code title 4, division 3, part 2, chapter 13, article 2 (commencing with section 39560).

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**SECTION 4. Effective Date.** This ordinance shall take effect 30 days after its final passage.

**SECTION 5. Posting.** Within 15 days from the date of passage of this ordinance, the City Clerk shall post a copy of it in at least three public places in the City.

INTRODUCED by the City Council on the 11th day of August 2009.

PASSED AND ADOPTED by the City Council of the City of Wheatland on the \_\_\_\_ day of \_\_\_\_\_ 2009, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Enita Elphick, Mayor

Attest:

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Lisa J. Thomason, City Clerk

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I hereby certify that the foregoing is a true and correct copy of City of Wheatland Ordinance No. 414, which ordinance was duly introduced, adopted and posted pursuant to law.

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Lisa J. Thomason, City Clerk